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Supreme Court, U.S.
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No. 05-1183

In the
Supreme Court of the United States

ROLANDO ARAUJO, JR.,

Petitioner,

v.

NEDRA CHANDLER, WARDEN

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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Petitioner respectfully submits this reply in response to respondent's brief in opposition and in further support of his petition for a writ of certiorari in this case.

ARGUMENT

Respondent acknowledges that there is a three-way conflict among the courts of appeals regarding the proper application of the actual innocence exception of *Schlup v. Delo*, 513 U.S. 298 (1995), to the statute of limitations governing federal habeas corpus petitions, 28 U.S.C. § 2244(d). (Br.Opp. 7). In light of this conflict, the first question presented in this petition clearly warrants review by this Court. Indeed, respondent does not, and could not, contend that this issue is not worthy of review. Instead, respondent argues that review should not be granted in this particular case only because the court of appeals suggested a possible "alternative ground" to support its denial of relief to Araujo: namely, that Araujo failed to demonstrate his "actual innocence." (Br.Opp. 7).

Respondent can take no comfort in this alternative ground, however, because the court of appeals's assessment the evidence of Araujo's actual innocence is plainly contrary to this Court's recent decision in *House v. Bell*, 547 U.S. ___, 126 S.Ct. 2064 (2006 WL 1584475) (June 12, 2006) (finding that petitioner met the actual innocence standard of *Schlup*). Whereas the court of appeals in the decision below based its alternative holding on the fact that Araujo's evidence of actual innocence was not "clear-cut," "irrefutable," or "conclusive" (Pet.App. 6-8a), this Court's decision in *House* confirms that *Schlup* requires no such certainty. *House*, 126 S.Ct. at 2077 ("the *Schlup* standard does not require absolute certainty about the petitioner's guilt or innocence"); *id.* at 2086 ("This is not a case of conclusive exoneration."); *id.* at 2085 ("The evidence pointing to [another suspect] is by no means conclusive. [However,] the evidence pointing to [that

suspect] likely would reinforce other doubts as to [petitioner's] guilt.").

Moreover, Araujo's evidence is just as compelling as the evidence presented in *House*. In *House*, the defendant met the *Schlup* standard by undermining critical scientific evidence (which was used at trial to establish a motive and provide a "central theme in the State's narrative linking [him] to the crime") and by providing "troubling evidence" to suggest that another suspect "could have" committed the crime. *Id.* at 2079, 2083. Araujo has done nothing less. Araujo's evidence shows, and respondent admits, that Araujo's gun and the host of evidence connecting that gun to the murder – which was the State's central theme at trial – was unequivocally false evidence. The admitted falsity of the State's gun evidence is no less powerful evidence of innocence than was the DNA evidence in *House*. Likewise, Araujo's evidence shows that it was Mendoza, and not Araujo, who very likely shot and killed Rodriguez. As *House* demonstrates, a reasonable juror presented with this sort of evidence would have a reasonable doubt as to a defendant's guilt and, therefore, the *Schlup* standard would be met.

House also makes clear that the state post-conviction court's adverse credibility finding regarding Mendoza's in-court confession is not dispositive under *Schlup*. *Id.* at 2078 (holding that a lower court's assessment of individual items of evidence does not "tie [this Court's] hands"). As the Court reiterated in *House*, the *Schlup* standard generally "does not turn on discrete findings regarding disputed points of fact," but instead "requires a holistic judgment about 'all the evidence'" from the perspective of a reasonable juror. *Id.*

In Araujo's case, the state post-conviction court's finding that Mendoza's in-court confession was not credible simply

cannot be reconciled with the host of evidence that corroborates Mendoza's guilt – evidence that both the post-conviction trial judge and the court of appeals failed even to consider. This evidence includes Mendoza's repeated and consistent confessions on the night of the murder to Cintron, Mendoza's girlfriend, and to Serrano and Delgado, his two other friends. These confessions are corroborated by contemporaneous police reports and by other evidence, including Mendoza's clear motive for revenge, which a reasonable juror would consider to be especially strong evidence of Mendoza's guilt. As the Court noted in *House*, "[w]hen identity is in question, motive is key." *Id.* at 2079. No reasonable juror would ignore this powerful evidence of Mendoza's guilt and nevertheless find Araujo guilty beyond a reasonable doubt. In light of this evidence, respondent's reliance on the credibility finding in the state post-conviction court to sustain the court of appeals's assessment of Araujo's actual innocence claim (Br.Opp. 9) is misplaced.

Respondent's reliance on other evidence suggestive of Araujo's guilt also is unavailing. To pass through the *Schlup* gateway, a petitioner need not conclusively refute all of the evidence presented at trial. *Id.* at 2086. Further, the evidence that respondent relies on to support Araujo's conviction – the contradicted and thoroughly impeached eyewitness testimony of the Bishops gang members and the spurious inculpatory statement evidence (Br.Opp. 7) – is not only far from "overwhelming," as respondent claims, but is virtually impossible to credit when the evidence is considered as a whole.

CONCLUSION

There is no merit to respondent's assertion that Araujo cannot meet the *Schlup* standard of actual innocence and that

this case therefore does not merit review by this Court. This assertion is completely at odds with this Court's recent decision in *House*. Accordingly, the petition for writ of certiorari should be granted in this case to address the important issue of how the fundamental miscarriage of justice exception applies to section 2244(d).

Respectfully submitted,

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